Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
National Exchange Carrier Association, Inc.	)	WC Docket No. 02-340
Tariff FCC No. 5, Transmittal No. 951	)	
	)	
Comments on Direct Case	)	

COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES

I. INTRODUCTION AND SUMMARY

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these comments in response to the Direct Case of the National Exchange Carrier Association (NECA)[1] filed in the above captioned proceeding. OPASTCO is a national trade association representing over 500 small telecommunications carriers serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 2.5 million customers. All of OPASTCO's members are rural telephone companies as defined in 47 U.S.C. §153(37).

Interstate access charges represent a significant portion of small and rural local exchange carriers' (LECs) total revenues. Therefore, it is essential for the LECs participating in the NECA pools to have reasonable assurance that they will be

[1] *National Exchange Carrier Association, Inc. Tariff No. 5, Transmittal No. 951,* WC Docket No. 02-340, Direct Case of the National Exchange Carrier Association, Inc. (fil. November 21, 2002). (Direct Case)

compensated for the interstate access services they provide to their interexchange carrier (IXC) customers. The dramatic financial decline that has swept the telecommunications industry during the past two years has greatly increased the level of uncollectible revenue for the pools. Consequently, NECA is justified in incorporating additional criteria for the assessment of security deposits in its tariff.

Within its Direct Case, NECA has demonstrated that its additional criteria for the assessment of security deposits are targeted only to those access customers who possess a greater likelihood of being unable to make payment for services rendered. Therefore, the Commission should affirm the proposed tariff revisions as they are a just, reasonable, and nondiscriminatory method of protecting those LECs participating in the tariff from losses due to nonpayment from financially troubled interstate access customers.

II. RECENT FINANCIAL STRESS THROUGHOUT THE TELECOMMUNICATIONS INDUSTRY REQUIRES NECA TO BOLSTER ITS CRITERIA FOR THE ASSESSMENT OF SECURITY DEPOSITS FOR TARIFF CUSTOMERS

The Commission has asked NECA why it is necessary at this time to revise the criteria in its tariff for the assessment of security deposits.[2] Within its Direct Case, NECA correctly notes that significant and pervasive financial weakness has recently emerged throughout the telecommunications industry.[3] During the past several years, there has been an unprecedented decline in the financial fortunes of a wide range of telecommunications companies. In a July 2002 statement to the Senate Committee on Commerce, Science, and Transportation, FCC Chairman Michael Powell commented on

[2] *National Exchange Carrier Association, Inc. Tariff No. 5, Transmittal No. 951,* WC Docket No. 02-340, Order, DA 02-2948, para. 9 (rel. Oct. 31, 2002). (Tariff Order)

[3] Direct Case, pp. 6, 15, and Exhibit D.

this financial turmoil within the telecommunications marketplace.[4] Chairman Powell indicated that within the telecommunications industry:

> [N]early 500,000 people in the United States alone have lost their jobs and approximately $2 trillion of market value has been lost in the last two years. By some estimates, the sector is struggling under the weight of nearly $1 trillion in debt. And, most segments have seen precipitous declines in stock values: the long distance industry is down 68% year-to-date, the wireless industry is down 71%, the ILECS are down 40%. Clearly, there are very serious stresses on this important industry.[5]

Credit rating agency Standard and Poor's (S&P) has stated that, although the telecommunications sector began the 1990's with one of the highest overall levels of credit quality within the financial marketplace, there has been a dramatic deterioration during the past several years.[6] In 1990, 92 percent of all of S&P's telecommunications ratings were investment grade. By 2001, only 17 percent remained at investment grade levels, while another 15 percent of all rated issuers within the telecommunications sector were in default.[7] Since the completion of this S&P report, major carriers such as Global Crossing, Ltd. and MCI/WorldCom, Inc. have also gone into bankruptcy.[8]

After assessing this dismal record, it should come as no surprise to the

[4] Statement of FCC Chairman Michael K. Powell on "Financial Turmoil in the Telecommunications Marketplace," Before the U.S. Senate Committee on Commerce, Science, and Transportation, July 30, 2002. (Powell Statement)

[5] Powell Statement, pp. 6-7.

[6] Nicholas Riccio, Richard Siderman, and Diane Vazza, "*Telecommunications' Debt Debacle No Big Surprise,"* Standard and Poor's, May 27, 2001, p. 1. (S&P Report)

[7] S&P Report, p. 1.

[8] Recent estimates by S&P indicate that more than 20 percent of all telecommunications companies defaulted in 2002 on a total of $60 billion in debt. When added to the over $30 billion that went into default during the prior period from 1996 to 2001, nearly $100 billion of debt is presently unrecoverable. *See,* Susan Polyakova, *European Telecom Sector Said to Regain Credibility, U.S. Severely Negative,"* Communications Daily, November 27, 2002, pp. 2, 4. *See also,* S&P Report, pp. 1-2.

Commission that NECA "has experienced an increase in uncollectibles that is unprecedented in its history," which puts "pooling companies at risk for millions of dollars."[9] Within its Direct Case, NECA has calculated that, of the total Common Line (CL) Pool and Traffic Sensitive Pool (TS) revenue base for 2002 year-to-date, uncollectible revenues account for nearly $30 million.[10] This figure represents a staggering increase of over 560 percent from the total uncollectibles reported for 2001.

Furthermore, NECA has pointed out that the year-to-date figure for pool uncollectibles does not include the total expected losses to the pools as a result of the WorldCom and Global Crossing bankruptcies. NECA estimates that, for WorldCom and Global Crossing alone, the total uncollectible revenue for 2002 will be $74 million when all losses have been completely reported.[11] Thus, the tremendous growth in both CL and TS pool uncollectibles since 2001 demonstrates a much greater degree of risk of nonpayment from the interstate access customers of the LEC pool members. Consequently, it is necessary and appropriate for NECA to strengthen its criteria for the assessment of security deposits on those interstate access customers who run the greatest risk of defaulting on their payment obligations. The enhancement of these criteria will provide a long-term method to minimize the impact of any financial difficulty faced by an interstate access customer on the small and rural LEC participants of the pools.

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[9] National Exchange Carrier Association, Inc., Tariff No. 5, Transmittal No. 951, Description and Justification, p. 1.

[10] Direct Case, p. 4.

[11] *Ibid.,* pp. 4-5.

III. NECA'S CRITERIA FOR THE ASSESSMENT OF ADDITIONAL SECURITY DEPOSITS ARE TARGETED ONLY TO THOSE ACCESS CUSTOMERS WHO EXIHIBIT A GREATER LIKELIHOOD TO DEFAULT ON PAYMENTS

The Commission has questioned whether or not the revised security deposit provisions contained within the tariff are reasonable and not so vague as to allow NECA to arbitrarily discriminate among pool members' interstate access customers.[12] NECA has explained in its Direct Case that these amended criteria are meant to aide in identifying only those access customers who are the most likely to default on their payment obligations.[13] This would provide the LEC members of the pools with the ability to shield themselves from any possible uncollectible debt from these at-risk customers.

Each of the three criteria that NECA has included within Tariff No. 5 represents an objective, unbiased evaluation of the creditworthiness of an interstate access customer. The first and second criteria are quantifiable measures of the payment and billing histories of individual access customers that are reasonable indicators of the ability and likelihood of these entities to fulfill their payment obligations. The third criterion provides NECA with an additional tool to determine a customer's ability to pay, by relying upon the expert judgment of independent credit rating agencies.

This third criterion provides a truly unbiased measure for determining the creditworthiness of any interstate access customer. Credit ratings, whether provided by S&P, Moody's Investors Service (Moody's), or Dun & Bradstreet, all serve to "provide a relative measure of risk, with the likelihood of credit loss increasing as the rating

[12] Tariff Order, para. 9.

[13] Direct Case, p. 16.

decreases."[14] Therefore, these credit ratings allow potential creditors to assess the risks in entering into business arrangements with these lower rated companies.

Thus, NECA's third criterion would provide the LEC participants of the pools with a tool to protect themselves from losses due to the sudden financial deterioration or bankruptcy of an access customer who historically had a prompt payment history. NECA has accurately explained that both late payment histories and financial debt ratings are essential criteria for this very reason.[15] Were a previously creditworthy interstate access customer to have its credit rating(s) downgraded to a level below commercially acceptable standards, this would serve to warn pool members that this customer's ability to pay future debts has become questionable, justifying the assessment of security deposits.

Within its Direct Case, NECA has pointed to research which supports the ability of independent credit ratings to accurately predict which companies pose an increased risk of nonpayment.[16] Moody's released a report demonstrating "that speculative grade ratings [those below the Baa investment grade range] proved to be very effective at detecting and signaling latent default risk."[17] Specifically, of all the companies rated by Moody's that went into default for the 1983 to 2001 period, just over 90 percent were rated below investment grade (below Baa3 for Moody's and below BBB- for S&P).[18]

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[14] Statement of Robert Konefal, Managing Director, Moody's Investors Service, FCC *En Banc* Hearing on Steps Toward Recovery in the Telecommunications Industry, October 7, 2002, p. 2.

[15] Direct Case, p. 20.

[16] *Ibid.,* p. 16.

[17] *"Default and Recovery Rates of Corporate Bond Issuers,"* Moody's Investor Service, February 2002, p. 9.

[18] *"Understanding Moody's Corporate Bond Ratings and Rating Process,"* Moody's Investor Service, Rating Policy, May 2002, p. 9.

NECA also has pointed to a Verizon study which demonstrates that a direct correlation exists between S&P's credit ratings and those customers with outstanding receivables of 90 days or more.[19]

This research clearly validates NECA's use of debt securities ratings and composite credit appraisal ratings as objective indicators of those interstate access customers that pose a greater risk for the nonpayment of access charges. As such, they are neither arbitrary nor discriminatory. Consequently, the Commission should not view it as unreasonable for LEC pool participants to expect security deposits from these higher risk customers.

[19] *Verizon Telephone Companies, Tariff FCC Nos. 1, 11, 14, and 16, Transmittal No. 226,* Reply Comments of Verizon to Petitions to Reject or Suspend and Investigate, pp. 14 and Exhibit D (fil. Aug. 7, 2002). *See also,* Direct Case, p. 16.

IV. CONCLUSION

The Commission should approve NECA's additional criteria for requiring security deposits from interstate access customers of the LEC members of the pools. Approval of these criteria is necessary due to the weakened financial health of the telecommunications industry as reflected by a dramatic increase in LEC pool members' uncollectible interstate access revenues. NECA's Direct Case clearly demonstrates that its criteria for the assessment of security deposits will target only those access customers who have a greater probability of defaulting on their payment obligations. Since these criteria are reasonable, narrowly tailored, and nondiscriminatory, the Commission should promptly approve Tariff No. 5, Transmittal No. 951. It is absolutely essential that NECA's tariff be able to protect the pool members' ability to receive payment for all of the interstate access services that they provide.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jeffrey W. Smith, hereby certify that a copy of the comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, on this, the 5th day of December, 2002, to those listed on the attached list.

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